

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

John G. Merritt and Moira	:	CIVIL ACTION
Ann Merritt	:	
	:	
v.	:	
	:	
Delaware River Port	:	
Authority	:	NO. 98-3313

M E M O R A N D U M

**Padova, J.**

November 23, 1998

This case involves allegations of sexual harassment by Plaintiff John Merritt ("Merritt"), a Controls Technician employed by Defendant Delaware River Port Authority ("DRPA"). Before the Court is DRPA's Motion to Strike Punitive Damages Demands from the Complaint. For the reasons set forth below, the Court will grant DRPA's Motion.

I. INTRODUCTION AND FACTS

According to the Complaint, John Pilla, a custodian employed by DRPA, verbally and physically harassed Merritt on various occasions during 1996 and 1997.<sup>1</sup> (Compl. at ¶¶ 21-24.) The Complaint includes the following Counts: (1) violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C.A. §

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<sup>1</sup>Pilla is not a party to this suit.

2000e et seq. (West 1994 & Supp. 1998); (2) violation of 42 U.S.C.A. § 1983 (West Supp. 1998) and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; (3) negligent retention and supervision; (4) intentional infliction of emotional distress; and loss of consortium.<sup>2</sup> Plaintiffs demand punitive damages in each Count.

## II. LEGAL STANDARD

A claim may be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure only if the plaintiff can prove no set of facts in support of the claim that would entitle him or her to relief. ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). The reviewing court must consider only those facts alleged in the complaint and accept all of the allegations as true. Id.; see also Rocks v. Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989) (holding that in deciding a motion to dismiss for failure to state a claim, the court must "accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the nonmoving party").

## III. DISCUSSION

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<sup>2</sup>The loss of consortium count is brought by Plaintiff Moira Ann Merritt, Plaintiff John Merritt's wife.

DRPA argues that Plaintiffs' punitive damages claims are legally impermissible and, therefore, should be stricken from each Count in the Complaint. Plaintiffs concede that punitive damages are not recoverable under Section 1983. (Pls.' Resp. at 1-2.) Plaintiffs, however, do not concede that their punitive damages demands under Title VII and state tort law are impermissible.

A. Plaintiffs' Title VII Claim

The 1991 Amendments to Title VII expressly exempt governments, governmental agencies, and political subdivisions from liability for punitive damages under Title VII.

A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

42 U.S.C.A. § 1981a(b)(1)(West 1994).

The question before the Court is whether DRPA is a "governmental agency" within the meaning of Title VII and for the purposes of determining whether it is exempt from liability for punitive damages. The Court concludes that it is.

DRPA is a "public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey." 36

Pa. Stat. Ann. § 3503, Art. I (West 1961 & Supp. 1998); N.J. Stat. Ann. § 32:3-2 (West 1990 & Supp. 1998). It was created by Compact between Pennsylvania and New Jersey, which was ratified by Congress. Peters v. Delaware River Port Authority of Pennsylvania and New Jersey, 785 F. Supp. 517, 519 (E.D. Pa. 1992), reversed in part on other grounds, 16 F.3d 1346 (3d Cir. 1994). The Compact describes DRPA as a "body corporate and politic" and affirms that DRPA is "deemed to be exercising an essential governmental function." 36 Pa. Stat. Ann. § 3503, Art. I; N.J. Stat. Ann. § 32:3-2. DRPA was also granted the power of eminent domain and all other state powers reasonably necessary to effectuate its purpose. 36 Pa. Stat. Ann. § 3503, Art. I, Art. IV; N.J. Stat. Ann. §§ 32:3-2, 32:3-5(k).

The Court finds that DRPA shares many characteristics with federal, state, and local governmental agencies and has substantial connections to government. As such, it is akin to a governmental agency, within the meaning of Title VII's punitive damages exemption, and Plaintiffs are barred from recovering punitive damages against DRPA under Title VII. Fulton v. Delaware River Port Authority of Pennsylvania and New Jersey, Civ.A.No. 97-7875, slip op. at 12 (E.D. Pa. Apr. 23, 1998).

#### B. Plaintiffs' State Law Claims

In light of the Court's finding that DRPA has substantial

connections to government, it necessarily follows that DRPA is immune from punitive damages under state tort law. See King v. Port Authority of New York and New Jersey, 909 F. Supp. 938, 947 (D.N.J. 1995); Brady v. Port Authority of New York and New Jersey, Civ.A.Nos. 93-1679, 95-0442, 87-2701, 1998 WL 724061, at \*3 (E.D.N.Y. Oct. 15, 1998). Like the Port Authority of New York and New Jersey discussed in King and Brady, DRPA performs "an essential government function," the operation and development of transportation and port facilities. For these reasons, Plaintiffs cannot recover punitive damages against DRPA under state tort law. See City of Newport v. Fact Concerts, 453 U.S. 247, 101 S. Ct. 2748 (1981); Bolden v. Southeastern Pennsylvania Transportation Authority, 953 F.2d 807, 829-30 (3d Cir. 1991).

#### IV. CONCLUSION

For the foregoing reasons, the Court will strike Plaintiffs' punitive damages demand from Counts I, II, III, IV, and V of the Complaint.

An appropriate order follows.

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**O R D E R**

**AND NOW**, this 23rd day of November, 1998, upon consideration of Defendant's Motion to Strike Punitive damages Demands from Complaint (Doc. No. 5), Plaintiffs' Response thereto (Doc. No. 6), and Defendant's Reply (Doc. No. 8), **IT IS HEREBY ORDERED** that

1. Defendant's Motion is GRANTED.
2. Paragraphs 42, 50, 60, 67, 73, and the ad damnum clause, which requests the assessment of punitive damages against Defendant, are STRICKEN from the Complaint.

BY THE COURT:

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John R. Padova, J.